



July 24, 2001

Mr. Craig H. Smith  
Deputy General Counsel  
Texas Workers' Compensation Commission  
4000 South IH-35  
Austin, Texas 78704

OR2001-3198

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150390.

The Texas Workers' Compensation Commission (the "commission") received a request for all records pertaining to the disclosure of confidential information by the commission or its subsidiaries or agents. The requestor subsequently narrowed the scope of his request and clarified that he was seeking access to records only from 1999 to date, including copies of claim file information redacted to exclude certain confidential information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information at Attachment D is excepted from disclosure pursuant to section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the

decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); see also *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, No. 03-00-00219-CV, 2001 WL 23169, at \* 5 (Tex. App.--Jan. 11, 2001, no pet. h.). The purpose of section 552.111 is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. See *Arlington Indep. Sch. Dist.* at \* 6-7; ORD 615 at 4-5. We conclude that the submitted information at Attachment D constitutes internal communications of the commission consisting of advice, recommendations, opinions, and other material relating to the commission's policymaking processes. Consequently, the information at Attachment D may, therefore, be withheld from the requestor pursuant to section 552.111 of the Government Code.

You claim that the submitted information at Attachment E is excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) protects information that falls within the attorney-client privilege. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. See Open Records Decision No. 574 at 5 (1990). Purely factual communications from attorney to client, or between attorneys representing the client, are not protected. See *id.* at 3. After careful review, we conclude that the submitted information at Attachment E constitutes either confidential communications from a client to an attorney or an attorney's legal advice or opinion. Therefore, the submitted information at Attachment E may be withheld from the requestor pursuant to section 552.107 of the Government Code.

You claim that the submitted information at Attachment F is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.<sup>1</sup> Section 402.092(a) of the Labor Code provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in limited circumstances which are not applicable in this instance. See Labor Code § 402.092(a). An "investigative file" is "any information compiled or

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<sup>1</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes.

maintained by the commission with respect to a commission investigation authorized by law.” *Id.* § 402.092(d). Section 414.005 of the Labor Code provides that the commission’s Compliance and Practices Division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the Texas Workers’ Compensation Act (the “Act”) and commission administrative rules. *See* Labor Code § 414.005; *see also* §§ 414.001, .002. You state that the submitted information at Attachment F is a Compliance and Practices Division investigation file which concerns possible violations of sections 402.083 and 402.091 of the Labor Code, the Act, and commission rules. Pursuant to section 552.303 of the Government Code, our office requested that the commission submit additional briefing on the specific statutory authority that allows the Compliance and Practices Division to investigate commission employees for alleged violations of sections 402.083 and 402.091 of the Labor Code. In that supplemental briefing, you state that the Act clearly gives the division authority to investigate any alleged violation of Subtitle A of the Act, specifically citing sections 402.083 and 402.091 of the Labor Code. After careful review of the commission’s original and supplemental arguments, we conclude that the internal investigation files of commission employees for allegedly disclosing confidential information were developed in the course of the commission discharging its duties under the Act. *See* Labor Code §§ 402.083, .091. Usually, section 402.092 of the Labor Code would not shield from public scrutiny the conduct of a public employee. However, in this case, the commission’s investigation is authorized by the Act and the Act makes confidential the commission’s investigations concerning compliance with Texas worker’s compensation laws. Accordingly, we conclude that the submitted information at Attachment F is confidential and, thus, must be withheld from the requestor pursuant to section 552.101 of the Government Code in conjunction with section 402.092(a) of the Labor Code.

In summary, you may withhold the submitted information at Attachment D from disclosure pursuant to section 552.111 of the Government Code. You may withhold the submitted information at Attachment E from disclosure pursuant to section 552.107 of the Government Code. You must withhold the submitted information at Attachment F pursuant to section 552.101 in conjunction with section 402.092 of the Labor Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 150390

Enc. Submitted documents

cc: Mr. Jay Root  
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(w/o enclosures)